



**PILLSBURY WINTHROP<sub>LLP</sub>**

*For the new business universe*

# FOLLOW THE MONEY

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STATE BAR PRESENTATION  
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# OFFICE OF FOREIGN ASSETS CONTROL REGULATIONS

- Commonly known as “OFAC”
- Economic sanctions
  - 10 federal laws, including USA PATRIOT Act
- Applies to all U.S. businesses and citizens
- Applies to provision of services or goods, including financial

# TARGETS OF ECONOMIC SANCTIONS

- Countries
- Governmental agencies and officials
- Businesses (for profit and non-profit)
- Individuals
- Groups
  - Taliban since 1999
  - Terrorists since 1996
- Specially Designated Nationals List (“SDN List”)

# COUNTRIES AND GROUPS CURRENTLY COVERED

- The Balkans
- Burma (Myanmar)
- Cuba
- Iran
- Iraq
- Liberia
- Libya





# COUNTRIES AND GROUPS CURRENTLY COVERED

(Cont'd)

- Narcotics
- Non-Proliferation
- North Korea
- Sierra Leone
- Syria
- Sudan
- Taliban (Afghanistan)



# COUNTRIES AND GROUPS CURRENTLY COVERED

(Cont'd)

- Terrorism
- Unita
- Yugoslavia



# ACTIONS REQUIRED

- Blocking
- Rejecting
- Reporting
- General and Specific Licenses

# PENALTIES

- Civil
- Criminal
  - Up to \$10,000,000 per count for corporations
  - Up to \$5,000,000 per count for individuals
  - Up to 30 years imprisonment
  - Regulatory Examinations



# TRANSACTIONS COVERED

- Virtually all financial transactions
  - Deposit accounts
  - ACH
  - Wire Transfers
  - Loans
  - Letters of Credit
  - Broker/Dealer accounts

# ACTIONS TO TAKE

- Manual Review
- Interdict Software Systems
- Watch for all names: account holder, debtor, customer, buyer, seller, originator, recipient, beneficiary, trustee, banks, etc.
- Training

# CHECK

- All current accounts and loans
- New accounts and loans before opening
- Run all newly added names on SDN List against entire database
  - Names can be added at any time
  - Many have been added since 9/11

# NAME MATCHES

- False positives
- Due diligence
- Assistance from OFAC
- Notify customer (contrast to SARs)
- Sometimes conflicts with foreign laws

# SUSPICIOUS ACTIVITY REPORTS

- Banks must file if:
  - Transactions aggregate to \$5,000 or more
  - Appear to involve funds from illicit activity
  - Attempt to avoid a reporting requirement
  - Transaction has no apparent lawful purpose or is unusual for the customer and due diligence results in no reasonable explanation

# SUSPICIOUS ACTIVITY REPORTS (Cont'd)

- Crime to disclose filing of SAR
- Can convey underlying actions of employee to other institutions (but not SAR itself)
  - No safe harbor for malice
  - Voluntary



# CONTROL LISTS

- Different than OFAC
- Provided by regulators to banks
- Report back to regulators
- File SARs

# FINANCIAL ANALYSIS SINCE 9/11 Per DOJ

- 1000 search warrants
- 1500 financial subpoenas requesting information on over 9600 persons/accounts
- Current status of financial investigations
  - 750+ Accounts
  - 300+ Checking/Savings Accounts
  - 450+ Credit Card Accounts

# FINANCIAL ANALYSIS SINCE 9/11 Per DOJ (Cont'd)

- 500+ Wire Transfers
- 50+ International Bank Accounts
- 225+ Foreign Wire Transfers

# KNOW YOUR CUSTOMER STANDARDS

- Basel Due Diligence
- FATF Recommendations
- Regulatory Expectations

# ESSENTIAL ELEMENTS

- Customer acceptance policy (higher risk accounts)
- Customer identification
- Ongoing monitoring of high risk accounts
- Risk management



# ACTIONS

- Authenticate identity of customers
- Determine true ownership of accounts
- Determine source of funds
- Monitor for unusual activity



# ACTIONS Cont'd

- Special account opening procedures for high risk customers
- Special scrutiny of:
  - Private banking customers
  - Correspondent accounts

# ACTIONS Cont'd

- Payable through
- Foreign customers (especially officials of foreign governments)
  - Why do they want account in US?
- Accounts with lots of international activity
- OFAC scans
- Clear and consistent standards

# ACTIONS Cont'd

- Clear recordkeeping and retention requirements
- If information cannot be verified consider closing account
- Don't rely on referrals
- Don't do business with a customer who insists on anonymity or gives a fictitious name

# ACTIONS Cont'd

- Need access to offshore records—  
USA PATRIOT Act rules
- Require waiver of other country's  
privacy laws for international  
customers

# ACTIONS Cont'd

- KYC should be part of the risk management and control procedures
- Regular compliance reviews should be done
- Regular audits

# ACTIONS Cont'd

- Update programs, policies and procedures as needed
- Train both new and ongoing employees
- File SARs whenever required

